IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SECRETARIES REFERENCE NO.1 OF 1995

The Institute of Company Secretaries of India, an Institute established under the Company Secretaries Act, 1980 and having its Head Office at 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi 110 003 .. Petitioner.

V/s.

1. Vinay Asharam Rathi, of Bombay Indian Inhabitant, Residing at 34, Shantiniketan, Dr. Ambedkar Road, Matunga, Bombay - 400 019

2. The Union of India, through the Secretary, Ministry of Law, Justice and Company Affairs, 'B' Block, Paryavaran Bhawan CGO Complex, Lodi Road, New Delhi .. Respondents.

Mr.G.V. Aiman for the petitioner.

Mr.Vinay Rathi, respondent No.1 present in person.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 20TH OCTOBER, 2004.

ORAL JUDGMENT (Per R.M. Lodha, J.) :

This is a reference under Sub-section 5 of

Section 21 of the Company Secretaries Act, 1980 (for short 'Act of 1980').

2. The respondent has been held guilty of professional misconduct specified under clause (1) of Part II of Second Schedule of the Act by the Council of Institute of Company Secretaries ('the Council') and the Council has recommended to this Court that the respondent be reprimanded. The charge against the respondent is that though the certificate of practice as Company Secretary was not renewed, the respondent had signed annual return in the year 1990.

3. At the outset we may observe that reference could have been better drafted. The Institute initiated suo motu enquiry against the respondent to enquire into allegations of the professional misconduct inter alia (i) that the respondent without holding valid certificate of practice had signed annual return; (ii) that the respondent resorted to unfair means in soliciting professional work and (iii) that he was using the visiting cards in contravention of provisions of Section 7 of the Act of 1980. It appears that aforesaid charge (i) was not specifically mentioned in form G. The Disciplinary Committee found that the

respondent was guilty of professional misconduct under Clause 6 of Part I of Second Schedule of the Act of 1980 and also under Clause 7 of Part I of First Schedule. The report was forwarded to the Council. The Council accepted the findings of the Disciplinary Committee and ordered removal of name of the respondent from the register of members of the Institute for one year. The said order came to be challenged in appeal under Section 30 of the Act of 1980. The learned single Judge of this Court by order dated November 20, 1992 set aside the order of the Council removing the name of the respondent from the register of members of the Institute and accepted the apology that was tendered by the respondent before the Council and also before the Court. Then it appears that the Council again went into the charge (i) aforenoted on the ground that in the earlier disciplinary proceedings specifically this charge was not mentioned in form ‘G’.

4. We reflected over the matter and in our view the matter needs to be given decent burial because the respondent had already apologised for this lapse in the earlier disciplinary proceedings and that apology was accepted by this Court. It appears that due to misconception, the respondent

signed the annual return since he had already deposited the requisite fee for renewal of certificate of practice and he was expecting that as a matter of course the certificate will be renewed.

4. In the circumstances, we are satisfied that the disciplinary proceedings against the respondent deserve to be filed.

5. We order accordingly.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)